Testimony of
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Federal Energy Regulatory Commission
Before the Subcommittee on Energy and Air Quality
of the Committee on Energy and Commerce
United States House of Representatives
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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you today to discuss the Subcommittee's proposed energy restructuring legislation. I believe it is important for Congress and the Federal Energy Regulatory Commission (FERC) to work in tandem to accomplish the critical goal of ensuring the development of a competitive wholesale electric power market that is fair and efficient and benefits consumers. While I believe FERC has made great strides in the effort to increase wholesale competition over the past several years, I welcome Congressional guidance through legislation that assists in articulating and clarifying the steps that must be taken toward this end.

My testimony today will comment on H.R. 3406 and highlight specific aspects of the proposed legislation that I consider to be especially important from the perspective of a federal energy regulator. As a general matter, I am very supportive of H.R. 3406. I have testified before this Subcommittee many times on restructuring issues, and I am pleased that this proposed legislation is largely consistent with many of the views I have expressed. I am also pleased that the bill would have the effect of promoting small-scale

renewable generation. As I will discuss in greater detail below, however, there is one important exception: I do not support the proposed repeal of section 203 of the Federal Power Act (FPA).

Title I of the proposed legislation deals with electric supply. Among the provisions of Title I, I would like to address my comments to interconnection, the Public Utility Holding Act of 1935 (PUHCA), the Public Utility Regulatory Policies Act of 1978 (PURPA), and merger review. I have previously testified before this subcommittee that interconnection rules should be clarified and standardized in order to ensure that new sources of generation are able to interconnect to the transmission system. The Commission accelerated this process of standardization in October with the issuance of an Advanced Notice of Proposed Rulemaking (ANOPR) addressing procedures and protocols for interconnection. The ANOPR encourages parties to reach consensus on non cost-related issues of transmission interconnection and uses as a "strawman" the ERCOT model as supplemented by current Commission interconnection policy. Reports of the progress being made are positive, and I support issuance of a NOPR as soon as possible. The Commission's intention is to instruct parties to take up the issues of cost responsibility for transmission interconnections in the second phase of the transmission interconnection rulemaking.

Section 101 of the proposed legislation would decide the major issue of cost

responsibility by assigning system upgrade costs to the generator. I believe these pricing decisions need to be made carefully and with consideration of the multiple factors at issue. Although this legislative process certainly is one forum for deciding this important issue, the cost responsibility aspect might also benefit from comments and a consensus process such as the Commission plans for the second phase of our rulemaking. I expect the second phase, dealing with cost issues, will be more difficult and contentious; many states already are expressing their views.

Section 101 of the proposed legislation also requires the Commission to promulgate the technical standards for generators interconnecting with distribution facilities. Although it is no modest undertaking to establish national standards for distribution interconnections, I do believe reducing obstacles for small-scale distributed generation can produce good results. Distributed generation can increase options for consumers and would provide added reliability to the grid. Standards for all players, as well as the net metering provisions included in this legislation, may encourage the growth of this fledgling movement toward decentralization of the electric grid. Of course, we should expect the states to insist on a process that allows their opinions and concerns to be heard since this section shifts jurisdiction to the federal level.

The proposed legislation repeals PUHCA and replaces it with increased access by the Commission and state regulators to certain books and records. I support this

legislation. The proposed legislation also repeals prospectively the PURPA mandatory purchase obligation. I support the repeal of the mandatory purchase requirement in Section 210 of PURPA. I also support proposed section 133 of the bill, which would "grandfather" existing PURPA contracts.

I would like to highlight Subtitle D of Title I, which would eliminate FERC's merger review authority now embodied in section 203 of the FPA. This is the single aspect of this proposed legislation that I cannot support. The title itself of Subtitle D, "Redundant Review of Certain Matters," reveals my basic concern in this regard: I do not agree that FERC merger review is redundant. All merger reviews are not created equal. FERC's FPA "public interest" standard is different from the "no harm to competition" antitrust standard of the Sherman Act and the Clayton Act. The relevant information required for the type of review conducted by FERC is not the same information required by another agency conducting antitrust review of the same merger. While the same merger may be reviewed by various agencies, the analyses are not parallel; standards and requirements vary from agency to agency.

I believe it is important for FERC to continue its public interest-focused merger analysis, which looks at a merger's effects on rates, regulation, and competition. FERC, in its regulatory role, is particularly attuned to the issues that may arise as a result of competition and industry consolidation, including technical issues and new kinds of

mergers that may lead to the blurring of traditional utility services with other business lines. By acknowledging these issues, I believe that FERC has developed a dynamic and flexible process - one that is required in today's market. I urge the Subcommittee to continue to allow FERC to retain the authority to protect the public in this respect.

Title II of the proposed legislation deals with transmission operation. Section 201 of the proposed legislation would allow the Commission to require all public utilities and transmitting utilities to offer open access transmission services, extending the requirement for open access to transmitting utilities that are not public utilities. As I have testified on other occasions, I believe it is important to have equal and open access to all transmission at nondiscriminatory rates and comparable terms and conditions. At the same time, the public power sector has expressed concerns unique to its status, and these concerns should be addressed with respect to sections 201 and 202. Chairman Wood's testimony requests a change to the legislation to allow all tariffs for open access transmission service be on file with the Commission. I share the Chairman's concerns on these issues and support his testimony in this regard.

Section 202 addresses Regional Transmission Organizations (RTOs). There is no more important effort underway at FERC today than the formation of RTOs. Since the Commission began promoting RTOs as a means to remove barriers and impediments present in wholesale electricity markets, I have been fully committed to the goal of RTO

formation. While there is room for disagreement on the best path to attain the goal of fully functioning RTOs, FERC is very actively pursuing the completion of the development of RTOs with clear responsibilities, independence, and sufficient scope.

When the Commission issued Order No. 2000 in December 1999, we decided to adopt an open and collaborative process that relied on voluntary regional participation. Since that time, I have strongly urged that FERC not depart from the basic philosophies embodied in Order No. 2000, particularly in the absence of a formal decision to do so, informed by the views of interested parties and state commissions. In my view, sufficient question remains over FERC's authority to mandate the formation of, or participation in, RTOs, such that any moves on our part toward a mandate will be counterproductive to FERC's ultimate goals. My concern is that this lack of clarity could lead the industry and the Commission to divert resources away from the important task of RTO implementation, and instead toward expensive and time-consuming litigation over FERC's authority. I therefore support Congressional clarification of FERC's authority with respect to RTOs.

Proposed section 202 mandates that all transmission utilities - both investor-owned utilities and public power/electric power cooperative utilities - participate in an RTO. To the extent this direction will eliminate any existing uncertainty regarding FERC's authority and permit RTO formation to proceed expeditiously, I support it. Proposed

section 202 also requires FERC to establish uniform market rules, including the establishment and enforcement of “seams” agreements. This direction is consistent with a generic rulemaking proceeding that FERC already has announced.

While the RTO standards embodied in the proposed legislation are, for the most part, consistent with those established in Order No. 2000, I believe it is possible that RTO procedures and standards may need to be adapted over time. In his testimony, Chairman Wood suggests that instead of codifying detailed standards and procedures for implementation of RTOs, additional flexibility for FERC to oversee an adaptive process might be warranted. Chairman Wood advocates a legislative approach that would have Congress adopt a simple provision permitting the Commission to require RTOs where it finds such RTOs to be in the public interest. I believe this approach would serve to remove existing uncertainties, while preserving FERC's ability to tailor its RTO program to an increasingly dynamic marketplace.

If Congress decides to take the approach of codifying RTO standards and procedures, Chairman Wood's testimony outlines several concerns regarding (1) the right of a single RTO applicant for an evidentiary hearing; (2) the requirement for "preponderance" of the evidence supporting FERC decisions; (3) the judicial review provision; (4) the requirement for a proposed RTO to have "sufficient generation within the RTO's boundaries to serve the load within such boundaries;" (5) the right of each

pubic utility in an RTO to make rate filings; (6) the definition of "market participant;" and (7) the preclusion of FERC modification to the governance and scope of an RTO approved before the law's enactment. I share the Chairman's concerns on these issues and support his testimony in this regard.

Title III of the proposed legislation provides for Commission certification of one electric reliability organization to develop and enforce reliability standards for the bulk-power system. I agree that the voluntary reliability system, which has been in place for over three decades, should be replaced with one in which a self-regulated independent reliability organization, with oversight by the Commission, establishes and enforces mandatory reliability standards. I especially support the provisions of section 216(e), which provides for sanctions and penalties for failure to comply with reliability rules. In my view, such a change in the manner in which the reliability of the interconnected grid is overseen and managed is required in order to ensure a competitive bulk power market.

The provisions of Title IV direct the Commission to conduct a rulemaking to establish incentive and performance-based rate policies for expansion of transmission networks to promote expansion of the transmission grid to support the growth of competitive markets. Section 401 states that such policies should encourage the deployment of new transmission technologies to increase capacity of existing networks and to reduce line losses; promote environmentally sound transmission design techniques;

and promote the efficient use of transmission systems on a real-time basis. I believe that the Commission's transmission rate policies should encourage and promote such policy objectives. I would point out that I believe these goals may be achieved through rate policies other than incentive or performance-based rates. In my view, policies such as allowing a reasonable return on equity or accelerated depreciation for new technologies would act to encourage such investment.

Section 402 would give the Commission a "backstop" role in transmission siting. I believe that this is certainly an improvement over the present jurisdictional scheme, in which the Commission has no role in the permitting and siting of new transmission facilities. However, as I have testified previously, my primary concern with a backstop role for the Commission is that such an approach could result in costly and inefficient duplication of processes, records, and efforts by the various decisional authorities involved in transmission siting.

My preference would be for FERC to be granted federal eminent domain authority similar to the authority the Commission exercises with respect to the siting of interstate natural gas pipelines under the Natural Gas Act. The Commission could develop procedures to ensure cooperation with the states and provide for regional participation. I believe that this more centralized approach is preferable from an efficiency standpoint, and will result in less bureaucracy and more timely decisions for transmission providers

and consumers. I am not advocating that the Commission should have siting authority for electric distribution lines or power plants. I believe that state governments are best positioned to make those determinations.

Finally, I would like to acknowledge the provisions of Title VII of the proposed legislation. These provisions strengthen the Commission's authority to assess civil and criminal penalties for violations of the FPA and increase the level of such penalties. I have advocated such changes and believe they will greatly aid the Commission in fulfilling its regulatory responsibilities.

In conclusion, I again thank the Subcommittee for this opportunity to comment upon the Subcommittee's proposed legislation. As I have testified in previous hearings before this Subcommittee, the Commission must have sufficient authority to advance its goals of achieving fair, open and competitive bulk power markets. I believe that this legislation, with the modifications I have suggested, would clarify our authority and greatly assist the Commission in realizing the benefits of wholesale competition.